IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1766 of 2006

Smt. Kulsum Mohd. Faimid Qureshi
R/at: Nawab chawl no. 5, Room no. 62,
1st floor, Jairajbhai lane,
Sukhlaji Street, Nagpada,
Mumbai- 400 008.
Shri Mohd. Faimid
Khalil Ahmed Qureshi ...Petitioner
(wife of detenu)

Versus

1. The State of Maharashtra
   through the Secretary to the
   Government of Maharashtra
   (Preventive Detention), Home
   Department (Special), Mantralaya,
   Mumbai-32.

2. A.N. Roy,
   The Commissioner of Police,
   Brihan Mumbai.

3. The Superintendent of Prison
   Thane Central Prison, Thane.

4. The Superintendent of Prison,
   Nasik Road Central, Nasik.

5. The Secretary to the Hon'ble
   Advisory Board Constituted under
   M.P.A.D. Act C/o. Desk Officer,
   Desk-10, Home Department (Special)
   Mantralaya, Mumbai. ...Respondents

Ms A.M.Z. Ansari, for the petitioner.
Mr D.S.Mhaispurkar, APP for the respondent-State.

CORAM : SMT.RANJANA DESAI & D.B.BHOSALE,JJ.
DATED : 23rd APRIL, 2007

ORAL JUDGMENT(Per D.B. Bhosale, J.)

1. The wife of a detenu- Mohd.Faimid Khalil Ahmed Qureshi challenges an order of detention dated 23.6.2006 passed by the Commissioner of Police, Brihan Mumbai, in exercise of the powers conferred by sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (Mah. Act No.LV of 1981) (Amendment-1996), (for short, "the said Act") with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order.

2. The order of detention is founded on the grounds of detention dated 23.6.2006 communicated to the detenu as provided for under section 8 of the said Act read with Article 22(5) of the Constitution of India. The action of detention is based on a solitary incident that occurred on 24.3.06 at about 15.30 hours. It appears that an offence under section 326 read with 34 of IPC has been registered in respect of the said incident at Nagpada Police Station bearing C.R.No.196/2006 on a complaint lodged by Arif Abdul Rajjak Shaikh against the detenu and his associates Mohd.Sohail @ Chittu Yunus Ansari, Abdul Karim Mehboob Shaikh and Ashfaq Noor Ahmed Sayyed. In connection with this incident, statements of some witnesses including incamera statements of witnesses A and B

referred to in the grounds of detention, were recorded and a detailed reference thereto is made in the grounds of detention dated 23.6.06. Based on this incident, it is mentioned in the grounds of detention that the detenu is a weapon wielding dangerous desperado of violent type having taken to the life of crime for the sake of easy money and to show his upper hand in the localities of Kamathipura, Jairajbhai lane, Sukhlaji Street, Foras road and areas adjoining thereto within the jurisdiction of Nagpada Police Station in Brihan Mumbai. It is further stated that the detenu has unleashed a reign of terror in the above areas and thereby has become a perpetual danger to the life and properties of people residing and carrying out their daily vocations in these areas. It appears, in the past, with a view to curtail the activities of the detenu and his associates who posed a great threat to the maintenance of a public order and tranquillity in the localities of Nagpada police station, the detenu was detained under N.S.A in the year 1992 vide order dated 31.12.1992 for a period of one year.Taking the entire material placed before the detaining authority, it has recorded in the grounds of detention its subjective satisfaction that the detenu is a dangerous person as defined in section 2(b-1) of the said Act.The grounds of detention also demonstrate that the detaining authority had a knowledge that the

detenu was granted bail in connection with the offence bearing C.R.No. 196 /2006 registered in pursuance of the complaint lodged by Arif Abdul Rajjak Shaikh after the alleged incident dated 24.3.2006. It is against this backdrop, the order of detention came to be passed after an approval of detention granted by the State Government under section 3(3) of the said Act. The detenu was also informed about his right to make representation to the detaining authority, as also to the State Government, the Central Government and the Advisory Board constituted under section 9 of the said Act.

3. The petitioner has challenged the order of detention on two grounds. Firstly, that the order of detention is a classic example of non-application of mind, and secondly the activities of the detenu by no stretch of imagination could be said to be prejudicial to the maintenance of public order. Though in the writ petition several other grounds have also been raised challenging the order of detention, Ms Ansari, learned counsel for the petitioner, confined her arguments on the aforesaid grounds being ground nos 4(vi) and 4(viii) in the Memo of petition. We deem it appropriate to reproduce the ground nos.4(vi) and 4(viii) to avoid a detailed reference to the submissions made by Ms Ansari in support thereof.

"4(vi) The Petitioner says and submits that the detaining authority has stated in 2nd para of para 5(a)(i) that - ....."you gave a blow of knife on left portion of face of the complainant, due to which he sustained injury from his nose to neck". The Petitioner says that the detaining authority has also in para 5(a)(vii) considered the medical certificate of complainant "5(a)(vii) The medical certificate dated 22/4/2006 of the injured Complainant Shri Arif Abdul Rajjak Shaikh, indicating the injuries caused to him issued by Registrar, B.Y.L Nair Hospital was obtained by Police". The petitioner further says and submits that the detaining authority also considered the Bail Application and Bail order passed thereon (a document at serial no.18 page 137 to 240). The Petitioner says and submits that on perusal of medical certificate of the complainant and Bail order dated 9-5-2006 passed by the Hon'ble Session Court, Mumbai shows that the injury (only one injury) suffered by the complainant was only a superficial linear abrasion on left cheek (not from nose to neck as alleged in the grounds of detention) and it was further observed by the Hon'ble Court that "Though a number of cases had been registered against the applicant in the past admittedly, he has been acquitted from all the said cases. What is further significant is that the said cases are quite old and no case after the year 1998 appears to have been registered against the application.... Considering the entire facts and circumstances of the case and more particularly the nature of injury which is difficult to be termed as "serious". I am inclined to release the applicant (detenu)"..... The Petitioner says and submits that there is non-application of mind on the part of detaining authority as on perusal of above said observation of Hon'ble Session Court and the medical certificate one will come to the conclusion that the incident on the basis of which the impugned detention order has been issued is not a case for preventive detention; this shows that detaining authority has not read the document placed before him, if read, misread the same;

which impaired the satisfaction arrived at by the detaining authority. The impugned order of detention based on such satisfaction is malafide null and void".

"(viii) The Petitioner says and submits that the sponsoring authority having been satisfied that the detenu's activities were prejudicial to the maintenance of public order and also his being at large was danger to the society at large, ought to have opposed the bail application tooth and nail. The Petitioner says and submits that the sponsoring authority have opposed the bail application on two false grounds that detenu had given a blow on the check of the Complainant with knife, due to which the Complainant sustained 15 cm injury on his cheek, secondly that against detenu cases are pending. The Petitioner says and submits that as soon as it was brought to the notice of the Hon'ble Court, the real fact, Court granted bail to the detenu. The Petitioner further says and submits that it was thereafter when released on bail, at the instant of Nagpada police station (sponsoring authority) a chapter proceeding was initiated against the detenu which proceeding was dropped by the competent authority. The Petitioner says and submits that thereafter the present impugned detention order was passed against the detenu. This shows gross misuse of power on the part of detaining authority as well as the part of sponsoring authority. In the result the impugned order of detention is malafide, null and void."

4. The detaining authority in paragraph 12 of the reply affidavit dated 15.11.2006, in reply to ground no.4(vi), has simply stated that he had considered an order granting bail by the learned Sessions Judge. The detaining authority has categorically denied that the order of detention passed by it suffers from vice of nonapplication of mind and that it had not read or

misread a medical certificate and the order passed by the Sessions Court. The detaining authority has not stated anything more in paragraph 12 of the reply. Insofar as ground no.4(viii) is concerned, the detaining authority in paragraph 13 of the reply has stated that the detenu's activities were prejudicial to the maintenance of public order and also his being at large was danger to the society and, therefore, his bail application ought to have been opposed. He has further stated that even if the learned Sessions Judge held that the injuries cannot be termed as serious injuries, he had considered all these aspects and on the basis of the material placed before him recorded that he was subjectively satisfied about the complicity of the detenu in the said offence and also that the activities of the detenu were prejudicial to the maintenance of public order and hence he issued the detention order. Mr Mhaispurkar, after taking us through the aforesaid paragraphs of the reply affidavit, vehemently submitted that the material on record is sufficient to demonstrate that the detaining authority applied its mind to all the aspects and after having satisfied that the activities of the detenu were prejudicial to the maintenance of public order, the order of detention came to be passed.

5. We perused the grounds of detention as also

the reply affidavits filed by the detaining authority and the sponsoring authority. The incident dated 24.3.2006 at 18.30 hours, as narrated by the complainant Arif Abdul Rajjak Shaikh and as reflected in paragraph 5(a)(i), reads thus:-

> "5(a)(i) On 24.03.2006 at about 15.30 hrs the Complainant had gone to Twinkle Nursery School at Mumbai Central to receive his daughter. He brought his daughter at home and remained at home, at that time he had heard noise of quarrel from the downward of the building. After lunch complainant went downstairs where he learnt from the people that, a quarrel took place between Shri Mohd. Khalid Shaikh, the neighbour of the Complainant and your brother-in-law Shri Yakub Yusuf Shaikh over children. On the same day i.e on 24.03.3006 in the evening at 18.30 hrs the complainant was sitting alone near the gate of Nawab Chawl, Sukhlaji Street. At that time you alongwith your associates Mohd. Sohail @ Chittu Yunus Ansari, Abdul Karim Mehboob Shaikh and Ashfaq Noor Ahmed Sayyed approached the Complainant and asked him "Tu kisko war marega". Upon that the complainant told you and your associates that he was alone there and he had not said the same to anybody and asked you to tell the name of the person who told you that he had said the same. The Complainant further told you that he has no way related to your quarrel. Upon which you and your above said associates started beating the Complainant. Your associates Mohd. Sohail @ Chittu Yunus Ansari and Abdul Karim Mehboob Shaikh were beating the Complainant with fist blows. At that time your associate Abdul Karim Mehboob Shaikh attacked complainant's neck with knife, however complainant had evaded the blow. Immediately you gave a blow of knife on left portion of face of the complainant, due to which he sustained injury from his nose to neck. Your associate Ashfaq Noor Ahmed Sayyed had also beaten the complainant with fist blows. Seeing the incident people gathered there, whereupon you and your said associates left

> away. Seeing the weapons in your hand, nobody tried to catch you. Thereafter the complainant went to the police station and with the help of police he went to the Nair Hospital where he was treated for his injury".

6. From the narration of the incident in paragraph 5(a)(1), it appears that the detenu allegedly gave a blow of knife on left portion of face of the complainant due to which he sustained an injury from his nose to neck. The detaining authority also in paragraph 5(a)(vii) made a reference to the medical certificate dated 22.4.2006 of the injuries suffered by the complainant. The statements of witnesses and more particularly witness A and witness B were also considered by the detaining authority in support of the allegation of assault on the complainant. It appears that the detenu had filed bail application and it was granted by the Sessions Court. The Sessions Court, while releasing the detenu on bail, appears to have had perused the medical certificate of the complainant to which the learned Judge has made reference in the order of bail dated 9.5.2006. A clear reference to the injury suffered by the complainant is made in the order. The learned Judge has observed in the order that the injuries suffered by the complainant were superficial linear abrasion on the left cheek. The injury is not as described in paragraph 5(a)(i) of the grounds of detention. In

this paragraph the injury is described as a knife blow on left portion of the face of the complainant due to which he sustained injury from nose to neck. The learned Judge, while granting bail, further observed that though a number of cases had been registered against the detenu in past, admittedly he had been acquitted from all the said cases and all those cases were old and there was no fresh case after 1998. Though this order was before the detaining authority, in our opinion, he has not considered the same in proper perspective which has impaired the satisfaction arrived at by the detaining authority. From perusal of the record and more particularly the material referred to above, it is clear that the detaining authority did not apply its mind to the material before him. On this ground alone, the order of detention deserves to be set aside. A perusal of the medical certificate of the complainant and the order of bail, in the facts of this case, persuade us to hold that the detention order suffers from nonapplication of mind. It is true that the detaining authority has stated in reply affidavit that he perused the order of bail and the medical certificate but keeping in view the safeguards envisaged under Article 22 of the Constitution of India it was absolutely essential for the detaining authority to apply its mind to the facts of the case as reflected

in the statement of the detenu and the witnesses when the actual order of detention and grounds thereof were prepared. The material inconsistency in the statements and the medical certificate is apparent. To that extent there has been no application of mind on its part and, therefore, in the facts and circumstances of this case, the impugned detention order cannot be sustained. In this view of the matter we do not deem it necessary to consider the other grounds argued by the learned counsel for the petitioner.

7. For the reasons aforementioned, the order of detention passed against the detenu Mohd Faimid Khalil Ahmed Qureshi cannot be sustained. The impugned order of detention dated 23/6/2006 issued by respondent no.2-The Commissioner of Police, Brihan Mumbai against detenu - Shri Mohd Faimid Khalil Ahmed Qureshi is quashed and set aside. Detenu - Shri Mohd Faimid Khalil Ahmed Qureshi is ordered to be released forthwith unless otherwise required in any other case. The petition is disposed of.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE,J.)

HIGH COURT
CRIMINAL APPELLATE SIDE
CRI.WRIT PETITION NO.1766 OF 2006

Date of Judgment:
23rd April, 2007

For approval and signature

THE HON'BLE SMT JUSTICE RANJANA DESAI.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?